



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,710	01/30/2002	Joseph Vistitsky	30193/10000	8200

4743 7590 01/13/2004

MARSHALL, GERSTEIN & BORUN LLP
6300 SEARS TOWER
233 S. WACKER DRIVE
CHICAGO, IL 60606

EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT	PAPER NUMBER
----------	--------------

3632

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/060,710

Applicant(s)

VISTITSKY ET AL.

Examiner

Naschica S Morrison

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13,36-46 and 51-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13,36-46 and 51-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 29 October 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is the second Office Action for serial number 10/060,710, Upper Body Support Device, filed on January 30, 2002. Claims 1-13, 36-46, 51-57 are pending.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "means for removably fastening" as recited in claim 7 must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 6, 9-13, 36, 37, 40, and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,938,439 to Fried et al. (Fried). Regarding claims 1-3, 6, and 9-13, Fried discloses a body support device (Fig. 1) comprising: an underside portion having a plurality of steps (10a, 10b) providing a plurality of different placements of the underside portion on an edge portion of an elevated surface, each step having an inner side (at 20, at 14 generally) and outer side (16, 18); wherein the underside portion is adapted for frictional engagement with a surface to maintain the body support

Art Unit: 3632

thereon; and an upper side portion (16 and 18) comprising a flexible, water resistant material (col. 4, lines 19-21) and being adapted for leaning thereon by a waist region of a person; wherein the plurality of steps (10a, 10b) provide a plurality of different height and distance placements of the body support device on the edge portion of the elevated surface and the upper side portion; and wherein placement of either of the steps (10a, 10b) on top of the elevated surface provides upper body support for a person leaning (when standing or seated) on the upper side portion (16, 18). Regarding claims 36, 37, 40, and 41, the method steps recited therein are deemed to be anticipated by the functions of the structure of the apparatus applied above.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4, 5, 38, 44-46, 51 and 53-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of Japanese Patent 11206537 to Kobayashi et al. (Kobayashi). With regards to claims 4, 5 and 53-57, Fried discloses the body support as applied above, but does not teach the body support device including a weight. Kobayashi discloses a body support device (1) comprising a plurality of cavities having weights (7) therein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified each of the steps (10b, 10a) of the body support device to include a cavity having a weight therein because one would have been motivated to have provided a magnetic treatment effect for the portion of the

Art Unit: 3632

person's body leaning on the device as taught by Kobayashi (see English Abstract).

Regarding claims 38, 44-46 and 51, the method steps recited therein are deemed to be made obvious by the functions of the structure of the apparatus applied above.

Claims 7 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of U.S. Patent 5,170,971 to Schaeffer et al. (Schaeffer). With regards to claim 7, Fried discloses the body support as applied above, but does not teach the body support device including means for removably fastening to the edge of the surface. Schaeffer discloses a body support device (10) comprising a means (16, 18) for removably fastening the body support device to the edge of a surface (14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the body support device to include a removable fastening means because one would have been motivated to permit releasable securement of the body support device to the surface as taught by Schaeffer (col. 4, lines 16 ff.). Regarding claim 39, the method step recited therein is deemed to be made obvious by the functions of the structure of the apparatus applied above.

Claims 8, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of U.S. Patent 5,199,124 to Klemis. With regards to claim 8, Fried discloses the body support as applied above, but does not teach the body support device including belt-receiving means. Klemis discloses a body support device (10) comprising a means (aperture within 20 as shown in Fig. 4) for receiving a belt (12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the body support device to include a belt receiving means

Art Unit: 3632

because one would have been motivated to have provided a means for holding the body support device in place in relation to the user's body as taught by Klemis (col. 2, lines 44-46). Regarding claims 42, and 43, the method steps recited therein are deemed to be made obvious by the functions of the structure of the apparatus applied above.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of Kobayashi and further in view of Klemis. With regards to claim 52, Fried in view of Kobayashi discloses the body support as applied to claims 4, 5, 38, 44-46 and 51 above, but does not teach fastening the body support device to a waist region of a person. Klemis discloses a body support device (10) comprising a means (aperture within 20 as shown in Fig. 4) for receiving a belt (12) that is fastened to the waist region of a person. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the body support device to include a belt receiving means and to have fastened the belt around a person's waist because one would have been motivated to permit the body support device to be held in place in relation to the user's body as taught by Klemis (col. 2, lines 44-46).

Response to Arguments

Applicant's arguments with respect to claims 1-3, 6-13, 37, 39-43 and 52 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 10/29/03 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine

Art Unit: 3632

the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in the references themselves and is further cited in the rejections above.

Regarding applicant's argument that the magnets of Kobayashi are not characterized as weights by Kobayashi, examiner considers the magnets to be "weights" since they are of a size and shape to carry out the function of a weight as described by applicant.

In response to applicant's argument that "Kobayashi does not provide any teaching...to use its magnets as weights", the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


Art Unit: 3632

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
1/9/04


ANITA KING
PRIMARY EXAMINER